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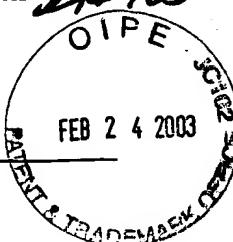
S/N 09/945495

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Fernando Gonzalez  
Serial No.: 09/945495  
Filed: August 30, 2001  
Title: VERTICAL TRANSISTOR AND METHOD OF MAKING

Examiner: Douglas Owens  
Group Art Unit: 2811  
Docket: 303.776US1

*H5/Election A  
PATENT  
3/5/03  
Smith*



**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
Washington, D.C. 20231

Applicant objects to the form of the Restriction Requirement on two grounds.

First, the Office Action Summary states claims 1-62 are subject to a Restriction Requirement. Claims 22-25 and 33-49, however, are the only claims addressed in the body of the Restriction Requirement. This is an improper Restriction Requirement as a matter of form, at a minimum.

Second, reference to figures for patentably distinct species is also improper, as the claims are directed to the claimed subject matter and a single figure can illustrate patentably distinct species, if they are present. Applicant further notes that less than all the figures have been enumerated in the Election of Species Requirement.

In response to the Restriction Requirement mailed January 16, 2003, Applicant elects, ~~with traverse, Group I (claims 33-62). Applicants cancels claims 1-32 without prejudice of disclaimer, and reserve the right to reintroduce them in one or more divisional applications at a later date.~~

Applicant identifies claims 33-42 as generic. Applicant ~~elects~~ claims 43-49 as a single disclosed species.

Applicant further identifies claims 50 and 55 as a single disclosed species. Applicant further identifies claims 51-54 as a single disclosed species. Applicant further identifies claims 56-60 as a single disclosed species. Applicant further identifies claims 61 and 62 as a single disclosed species.

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